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Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

JIMMIE G. BILES, JR., M.D.,)	
a resident of Wyoming,)	
)	
Plaintiff,)	
)	
vs.)	No. 11CV-294-F
)	
LISA SHAURETTE FALLON,)	
)	
Defendant.)	

**Defendant's Motion to Consolidate Cases for Discovery
Fed. R. Civ. P. 42(a) and U.S.D.C.L.R. 42.1**

COMES NOW the Defendant, Lisa Shaurette Fallon by and through her Counsel P. Craig Silva of Williams, Porter, Day, and Neville P.C. and moves the Court to consolidate this case with Docket No. 2:11-CV-00366-NDF Jimmie G. Biles Jr. MD v. John Henry Schneider, MD and Michelle Rene Schneider. The grounds for the Motion are as follows:

1. Fed. R. Civ. P. 42(a) provides:
 - (a) Consolidation. If actions before the court involve a common question of law or fact, the court may:
 - (1) join for hearing or trial any or all matters at issue in the actions;

- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

2. Generally a district court has the discretion to consolidate separate actions for trial if the cases involve common issues of law or fact. *American Emp. Ins. Co. v. King Resources Co.*, 545 F.2d 1265, 1269 (10th Cir. 1976). The primary objective of the above quoted rule is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties. *Breaux v. American Family Mut. Ins. Co.*, 220 F.R.D. 366, 367 (D. Colo. 2004). The party requesting the consolidation bears the burden to show that judicial economy is not outweighed by the possibility of delay or prejudice to the opposing party. *Bank of Montreal v. Eagle Associates*, 117 F.R.D. 530, 532 (S.D.N.Y. 1987).

3. Defendant seeks these cases be consolidated at this point for discovery and ultimately for trial purposes. A cursory review of the two *Complaints* reveals the common facts and law at issue in this case. Both cases stem from the dissemination of a flyer that allegedly contained defamatory statements about Dr. Biles to several thousand residents in the Basin area of Wyoming. Both cases pled defamation and other similar claims. Both cases will involve the same type of discovery; namely depositions of Dr. Biles, the Schneiders, and Lisa Fallon. Both cases are in the early stages. The Fallon matter is post answer but prior to significant discovery. The Schneider case is in the *Answer* phase. Consequently, both cases are early in the litigation. Some discovery has

already occurred; for example the deposition of the Schneiders and Ms. Fallon. For the Schneider deposition counsel from both cases participated. There is no valid reason not to consolidate these cases for discovery and ultimately trial.

4. Counsel has received a letter from Plaintiff's counsel indicating her desire to set depositions. (See **Exhibit A**). That letter excludes Schneiders' counsel from that discovery process. It makes no sense economically to do these depositions separately. Everybody wants to know what these witnesses will say.

5. Counsel for Ms. Fallon has spoken to Counsel for the Schneiders and counsel for Dr. Biles. Schneiders' counsel consents to consolidation. Dr. Biles' counsel does not.

WHEREFORE Defendants ask that the Court enter an order consolidating these two cases for discovery.

Dated this 15th day of February, 2012.

/s/ P. Craig Silva
P. Craig Silva, Bar #6-3066
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Casper, WY 82602
307.265.0700

CERTIFICATE OF SERVICE

I hereby certify that on February 15th, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send e-mail notification of such filing to the following: M. Kristeen Hand, R. Daniel Fleck and William L. Simpson.

/s/ P. Craig Silva
P. Craig Silva

GERRY L. SPENCE, PC
KENT W. SPENCE, PC
ROBERT A. KRAUSE, PC
R. DANIEL FLECK, PC
G. BRYAN ULMER, III, PC
MEL C. ORCHARD, III, PC
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THE
SPENCE LAW FIRM

OF COUNSEL
J. DOUGLAS MCCALLA, PC
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TYSON E. LOGAN
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ELIZABETH A. RICHARDS

February 10, 2012

Corey Rutledge
Erika Smith
LATHROP & RUTLEDGE, P.C.
PO Box 4068
Cheyenne, WY 82003

Re: *Biles v. Fallon, 11-CV-294J*

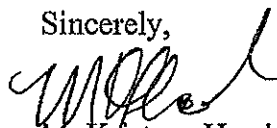
Dear Corey and Erica:

Thank you for talking with us this morning. We discussed several things regarding this case and your response to our subpoena. The following is a list of those things we discussed.

1. Please supplement your list of phone calls/faxes made from West Park Hospital to Indiana for the months of October and November 2010.
2. Please identify for us what the extension codes mean, who they belong to, or what personnel have access to these codes and if access is limited in anyway.
3. For two particular time periods, please identify the hospital business, if any, that was furthered by use of the phone call and/or faxes made to Indiana. The time periods in question are as follows: *Note that we understand HIPAA information and other privileged information are protected.* (i) October 17, 2010 through November 30, 2010; and (ii) October 18, 2011 through November 17, 2011.
4. Please provide us a copy of Dr. Biles's personnel files, credentialing files, privileges files, etc. A signed release is enclosed.

We would like to depose Mr. McMillan, Gail Clifton, Phyllis Drewer, Carrie Steckler, and the individual who collected the laundry and brought it to the laundry room on the day in question, if that person can be identified. I believe all can be deposed in one day. You have suggested February 29 or March 1. Let me know which day works for these witnesses and yourselves, and where you would like the depositions to take place, and I will send notices.

Sincerely,



M. Kristeen Hand
THE SPENCE LAW FIRM, LLC

Enclosure

EXHIBIT A

cc: Craig Silva

THE SPENCE LAW FIRM, LLC

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No. 11CV-294-F

Craig P. Silva
M. Kristeen Hand
R. Daniel Fleck
William L. Simpson
Laurence W. Stinson